

bid as the lowest alternate, and such substitution results in an increase in costs, there will not be Federal-aid participation in any increase in costs.

(c) A State highway agency may require a specific material or product when there are other acceptable materials and products, when such specific choice is approved by the Division Administrator as being in the public interest. When the Division Administrator's approval is not obtained, the item will be nonparticipating unless bidding procedures are used that establish the unit price of each acceptable alternative. In this case Federal-aid participation will be based on the lowest price so established.

(d) Appendix A sets forth the FHWA requirements regarding (1) the specification of alternative types of culvert pipes, and (2) the number and types of such alternatives which must be set forth in the specifications for various types of drainage installations.

(e) Reference in specifications and on plans to single trade name materials will not be approved on Federal-aid contracts.

§ 635.413 Warranty clauses.

The SHA may include warranty provisions in National Highway System (NHS) construction contracts in accordance with the following:

(a) Warranty provisions shall be for a specific construction product or feature. Items of maintenance not eligible for Federal participation shall not be covered.

(b) All warranty requirements and subsequent revisions shall be submitted to the Division Administrator for advance approval.

(c) No warranty requirement shall be approved which, in the judgment of the Division Administrator, may place an undue obligation on the contractor for items over which the contractor has no control.

(d) A SHA may follow its own procedures regarding the inclusion of warranty provisions in non-NHS Federal-aid contracts.

[60 FR 44274, Aug. 25, 1995]

§ 635.417 Convict produced materials.

(a) Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal-aid highway construction project if such materials have been:

(1) Produced by convicts who are on parole, supervised release, or probation from a prison or

(2) Produced in a qualified prison facility and the cumulative annual production amount of such materials for use in Federal-aid highway construction does not exceed the amount of such materials produced in such facility for use in Federal-aid highway construction during the 12-month period ending July 1, 1987.

(b) *Qualified prison facility* means any prison facility in which convicts, during the 12-month period ending July 1, 1987, produced materials for use in Federal-aid highway construction projects.

[53 FR 1923, Jan. 25, 1988, as amended at 58 FR 38975, July 21, 1993]

APPENDIX A TO SUBPART D OF PART 635—SUMMARY OF ACCEPTABLE CRITERIA FOR SPECIFYING TYPES OF CULVERT PIPES

| Type of drainage installation | Alternatives required | | | AASHTO designations to be included with alternatives | Application | Remarks |
|--|-----------------------|---------|---------------|--|--------------------------|--|
| | Yes | No | Number | | | |
| Cross drains under high-type pavement. ¹ | ..... | X ..... | ..... | ..... | Statewide | Any AASHTO-approved material. ² Do. ² |
| Other cross-drain installations. | X ..... | ..... | 3 minimum | M-170 and M-190. |do | |
| Side-drain installations | X ..... | ..... | .....do | M-36 |do | Do. ² Specified to meet special conditions. |
| Special installation conditions. | ..... | X ..... | ..... | ..... | Individual installation. | |
| Special drainage systems (storm sewers, inverted siphons, etc.). | ..... | X ..... | ..... | ..... | .....do | Specified to meet site requirements. |

¹ High-type pavement is generally described as FHWA construction type codes I, J, K, L, and plant mix and penetration macadam segments, respectively shown in the right-hand columns of type codes G and H having a combined thickness of surface and base of 7 in or more (or equivalent) or that are constructed on rigid bases.